

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

HERALD R. GUNDER,	)	
	)	
Plaintiff,	)	Case No. 3:09-CV-1918
	)	
vs.	)	
	)	
CSX TRANSPORTATION, INC.,	)	
NORFOLK SOUTHERN RAILWAY	)	JUDGE JACK ZOUHARY
COMPANY, and CONSOLIDATED	)	
RAIL CORPORATION,	)	
	)	
Defendants.	)	

**JOINT STATEMENT OF THE CASE**

Herald Gunder was employed by Consolidated Rail Corporation, Norfolk Southern Railway Company, and CSX Transportation, Inc. He worked as a carman, car inspector, brakeman and conductor for Consolidated Rail Corporation from April 1976 until May 1999; he worked as an engineer trainee for Norfolk Southern Railway Company from June 1999 until February 2000; and he worked as a carman and car inspector for CSX Transportation, Inc., from August 2000 until July 2006. Mr. Gunder alleges that he developed compression neuropathy of his left ulnar nerve at the elbow, impingement syndrome of the right shoulder, and torn right rotator cuff. Mr. Gunder alleges that these conditions were caused or aggravated by the negligence of the railroads. Mr. Gunder claims that he was required to undergo left elbow surgery and right shoulder surgery as a result of his injuries and that he is now disabled from returning to his former employment with the railroad.

Conrail, Norfolk Southern, and CSX deny Mr. Gunder's allegations that they were negligent and contend that Plaintiff's left elbow ulnar nerve entrapment and torn right rotator cuff are common medical conditions for someone of Plaintiff's age, weight, and gender.

Conrail, Norfolk Southern, and CSX further contend that Plaintiff is disabled from working as a carman and car inspector for reasons other than his left ulnar nerve entrapment and torn right rotator cuff, including congenital defects and rheumatoid arthritis, and would not have been able to continue working as for the railroad irrespective of his left elbow and right shoulder surgeries. Norfolk Southern contends that Plaintiff's job duties during his eight months of employment as an engineer trainee were mostly sedentary and did not cause or aggravate Plaintiff's injuries. Conrail, Norfolk Southern, and CSX maintain that they provided Plaintiff with a reasonably safe place to work at all times. Finally, Conrail, Norfolk Southern, and CSX contend that Plaintiff failed to mitigate his damages.

Respectfully submitted,

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Attorneys for Defendants,  
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and Consolidated Rail Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of February, 2011, a true and correct copy of the within **Joint Statement of the Case** was served upon all counsel of record by electronic means and first class, U.S. Mail, postage pre-paid, addressed as follows:

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